after his death. The sons promised to pay the debt. Thereupon the father made a will devising to the sons the farm charged with the debt. The father himself paid part of the debt before his death and informed the sons that they were indebted to him in the amount paid. The sons admitted the debt and offered to pay the father, but the latter refused payment, saying that he wanted them to pay it to his daughters. The sons agreed with the father that they would pay the daughters. *Held,* a gratuitous equitable assignment to the daughters which remained executory and could not be given effect. *Poff* v. *Poff* (Va., 1920), 104 S. E. 719.

The court thought that the transaction was not intended to operate as a transfer in trust. Compare *Russell's Executors* v. *Passmore* (Va., 1920), 103 S. E. 652; 19 MICH. L. REV. 420. If intended to take effect as an equitable assignment, it must of course be executed to be binding upon the donor's estate. An executed gift was thought impossible because there was no documentary evidence of the debt. See SCOTT'S CASES ON TRUSTS, 168, note. And of course an executory gift could not be given effect as a declaration of trust. See *ibid.*, 151, note. Would it have been possible, however, to decree a constructive trust on the theory that the father refrained from adding a codicil to his will in reliance upon the sons' promise to pay the daughters? See *Ahrens* v. *Jones,* 169 N. Y. 555; 13 COLUMB. L. REV. 343.

CARRIERS—THE COMMODITIES CLAUSE OF THE HEPBURN ACT.—In a suit to dissolve the intercorporate relations between the Lehigh Valley Railroad Co., the Lehigh Valley Coal Co., and the Lehigh Valley Sales Co. as a combination in restraint of trade in violation of the Anti-Trust Act, and also as transporting coal over the line of the defendant's railroad in violation of the commodities clause of the Hepburn Act, it was shown that the coal company and the railroad company agreed to the organization of the sales company, limiting subscriptions to the stock of the sales company to the stockholders of the railroad company. The officers and directors of the three companies were so interlocked as to result practically in one management. The coal company contracted to sell all of its coal to the sales company. *Held,* that the arrangement "was a mere device to evade the commodities clause of the Interstate Commerce Act, and therefore void." Case remanded to the District Court with instructions to enter a decree dissolving the combination effected. *U. S.* v. *Lehigh Valley R. Co.* (U. S., Dec., 1920), 41 Sup. Ct. 104.

And so comes to grief another attempt to take advantage of the illusive hope held out by Mr. Justice White in *U. S.* v. *D. & H. Co.,* 213 U. S. 366, in which it was said the inhibitions did not include "articles or commodities manufactured, mined, produced or owned by a *bona fide* corporation in which the railroad company is a stockholder." Events have abundantly justified the prediction of Justice Harlan in his dissent that if this were permitted it would be a device to evade the law. Justice, now Chief Justice, White preserves his consistency, for in this case, as in *U. S.* v. *Reading Co.,* 40 Sup. Ct. 425, reviewed in MICH. L. REV., *ante,* page 221, he dissents from the doctrine, though now he concurs with the decision as settled law. Fourteen years have passed, and still the railroads are trying out devices, and perhaps they

can afford to continue the trials as long as the courts do not penalize them for violation of the statute. This does not make respect for law, and possibly it might have been better for all concerned if the court had at once insisted that the railroad must completely separate itself from the mining and selling of coal. Apparently, all the stock in an independent coal company might have been sold to stockholders of the railroad company, provided the new company had been actually independent and free from any control by the corporation owning and operating the railroad. By this time much of such stock would have changed hands, so that the stockholders of the two companies would have been far from identical. This the railroad companies evidently did not, and do not, desire. How can they let go, and also keep hold, seems the problem they are still trying to solve. How long will the courts give them to work on it? For previous notes on the various attempts made, see 14 MICH. L. REV. 49, 19 MICH. L. REV. 221.

CONSTITUTIONAL LAW—CEDAR RUST LAW VALID EXERCISE OF THE POLICE POWER.—The legislature of Virginia passed what is known as the Cedar Rust Law, providing for the destruction of red cedar trees to prevent infection of adjacent apple orchards. The state entomologist was required to make a preliminary investigation. If he ordered the trees cut down, the owner was allowed an appeal to the circuit court of the county where the trees were located. The trees could not be destroyed until such hearing was finished. The act also provided for compensation to be paid to the owner of the destroyed trees. This appeal was brought as provided for by the statute, and the owners assailed the constitutionality of the act on the ground that it was a taking of property without due process of law. *Held,* a valid exercise of the police power. *Bowman* v. *Virginia State Entomologist* (Va., 1920), 105 S. E. 141.

The Fourteenth Amendment to the Federal Constitution was not designed to interfere with the power of the state to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the state, develop its resources, and add to its wealth and prosperity. *Barbier* v. *Connolly,* 113 U. S. 27. There are, of course, limits beyond which such legislation cannot legally go. If the act, therefore, has no real or substantial relation to the above objects, or if it is a palpable invasion of rights secured by the fundamental law, the courts may, and it is their duty so to adjudge, and thereby give effect to the constitution. *Mugler* v. *Kansas,* 123 U. S. 623. But the legislature is allowed a wide range of discretion in the matter, because, being familiar with local conditions, it is primarily the judge of the necessity of such enactments. Unless the act in question is unmistakably and palpably in excess of the legislative power there is no ground for judicial interference. *McLean* v. *Arkansas,* 211 U. S. 539. In the instant case it was clearly for the public interest that apple orchards should be protected. It is not a case of injury to human beings in the same proportion as is the menace of human disease, but the principles involved are the same in both instances. A great many statutes have been passed by Congress and the state legislatures, in the exer-